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August 18, 2010

Federal Communications Commission  
Wireline Competition Bureau  
P.O. Box 979091  
St. Louis, MO 63197-9000

Re: *Application for Commission Consent to Transfer of Control of Section  
214-Authorized Interstate Carriers from Q-Comm Corporation to  
Windstream Corporation*

To Whom It May Concern:

Enclosed please find an original and 5 copies of an application for Commission consent to the transfer of control of the Section 214-authorized subsidiaries of Q-Comm Corporation ("Q-Comm," FRN 0015732688) from Q-Comm to Windstream Corporation (FRN 0014400220) pursuant to Section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214.


Pursuant to Section 63.04(b) of the rules, this application is submitted as a consolidated domestic and international Section 214 transfer of control application, and a copy has been filed concurrently with the International Bureau via the International Bureau Filing System. Enclosed are a completed FCC Form 159 and a check for \$1015.00, payable to the Federal Communications Commission.

Please contact Kenneth D. Patrich at (202) 783-4141 if there are questions concerning this application.

Respectfully submitted,

WILKINSON BARKER KNAUER, LLP

By:

  
Mark A. Walker

Enclosures

READ INSTRUCTIONS CAREFULLY  
BEFORE PROCEEDING

FEDERAL COMMUNICATIONS COMMISSION  
REMITTANCE ADVICE  
FORM 159

Approved by OMB  
3044-0139  
Page No. 1 of 2

|                                                                                                                                                                                              |                                |                                                              |                        |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------|--------------------------------------------------------------|------------------------|
| (1) LOCKBOX #<br>979091                                                                                                                                                                      |                                |                                                              |                        |
| SECTION A - PAYER INFORMATION                                                                                                                                                                |                                |                                                              |                        |
| (2) PAYER NAME (If paying by credit card, state name exactly as it appears on the card)<br>Wilkinson Barker Knauer, LLP                                                                      |                                | (3) TOTAL AMOUNT PAID (U.S. Dollars and cents)<br>\$1,015.00 |                        |
| (4) STREET ADDRESS LINE NO. 1<br>2300 N Street, NW                                                                                                                                           |                                |                                                              |                        |
| (5) STREET ADDRESS LINE NO. 2<br>Suite 700                                                                                                                                                   |                                |                                                              |                        |
| (6) CITY<br>Washington                                                                                                                                                                       |                                | (7) STATE<br>DC                                              | (8) ZIP CODE<br>20037  |
| (9) DAYTIME TELEPHONE NUMBER (include area code)<br>(202) 783-4141                                                                                                                           |                                | (10) COUNTRY CODE (if not in U.S.A.)                         |                        |
| FCC REGISTRATION NUMBER (FRN) REQUIRED                                                                                                                                                       |                                |                                                              |                        |
| (11) PAYER (FRN)<br>0003775731                                                                                                                                                               |                                |                                                              |                        |
| IF MORE THAN ONE APPLICANT, USE CONTINUATION SHEETS (FORM 159-C)<br>COMPLETE SECTION BELOW FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET                                |                                |                                                              |                        |
| (13) APPLICANT NAME<br>Windstream Corporation                                                                                                                                                |                                |                                                              |                        |
| (14) STREET ADDRESS LINE NO. 1<br>4001 Rodney Parham Rd.                                                                                                                                     |                                |                                                              |                        |
| (15) STREET ADDRESS LINE NO. 2                                                                                                                                                               |                                |                                                              |                        |
| (16) CITY<br>Little Rock                                                                                                                                                                     |                                | (17) STATE<br>AR                                             | (18) ZIP CODE<br>72212 |
| (19) DAYTIME TELEPHONE NUMBER (include area code)<br>(501) 748-7000                                                                                                                          |                                | (20) COUNTRY CODE (if not in U.S.A.)                         |                        |
| FCC REGISTRATION NUMBER (FRN) REQUIRED                                                                                                                                                       |                                |                                                              |                        |
| (21) APPLICANT (FRN)<br>0014400220                                                                                                                                                           |                                |                                                              |                        |
| COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET                                                                                                        |                                |                                                              |                        |
| (23A) CALL SIGN/OTHER ID                                                                                                                                                                     | (24A) PAYMENT TYPE CODE<br>CUT | (25A) QUANTITY<br>1                                          |                        |
| (26A) FEE DUE FOR (PTC)<br>\$1,015.00                                                                                                                                                        | (27A) TOTAL FEE<br>\$1,015.00  |                                                              |                        |
| (28A) FCC CODE 1                                                                                                                                                                             |                                | (29A) FCC CODE 2                                             |                        |
| (23B) CALL SIGN/OTHER ID                                                                                                                                                                     | (24B) PAYMENT TYPE CODE        | (25B) QUANTITY                                               |                        |
| (26B) FEE DUE FOR (PTC)                                                                                                                                                                      | (27B) TOTAL FEE                |                                                              |                        |
| (28B) FCC CODE 1                                                                                                                                                                             |                                | (29B) FCC CODE 2                                             |                        |
| SECTION D - CERTIFICATION                                                                                                                                                                    |                                |                                                              |                        |
| CERTIFICATION STATEMENT<br>I, _____, certify under penalty of perjury that the foregoing and supporting information is true and correct to the best of my knowledge, information and belief. |                                |                                                              |                        |
| SIGNATURE _____                                                                                                                                                                              |                                | DATE _____                                                   |                        |
| SECTION E - CREDIT CARD PAYMENT INFORMATION                                                                                                                                                  |                                |                                                              |                        |
| MASTERCARD _____ VISA _____ AMEX _____ DISCOVER _____                                                                                                                                        |                                |                                                              |                        |
| ACCOUNT NUMBER _____                                                                                                                                                                         |                                | EXPIRATION DATE _____                                        |                        |
| I hereby authorize the FCC to charge my credit card for the service(s)/authorization herein described.                                                                                       |                                |                                                              |                        |
| SIGNATURE _____                                                                                                                                                                              |                                | DATE _____                                                   |                        |

SEE PUBLIC BURDEN ON REVERSE

FCC FORM 159

FEBRUARY 2003

FEDERAL COMMUNICATIONS COMMISSION  
REMITTANCE ADVICE (CONTINUATION SHEET)  
FORM 159-C

Page No. 2 of 2

USE THIS SECTION ONLY FOR EACH ADDITIONAL APPLICANT  
SECTION B1 - ADDITIONAL APPLICANT INFORMATION

(13) APPLICANT NAME

Q-Comm Corporation

(14) STREET ADDRESS LINE NO. 1

8829 Bond Street

(15) STREET ADDRESS LINE NO. 2

(16) CITY

Overland Park

(17) STATE

KS

(18) ZIP CODE

66214

(19) DAYTIME TELEPHONE NUMBER (include area code)

(913) 754-3339

(20) COUNTRY CODE (if not in U.S.A.)

FCC REGISTRATION NUMBER (FRN) REQUIRED

(21) APPLICANT (FRN)

0015732688

COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET

(23A) CALL SIGN/OTHER ID

(24A) PAYMENT TYPE CODE

(25A) QUANTITY

(26A) FEE DUE FOR (PTC)

(27A) TOTAL FEE

(28A) FCC CODE 1

(29A) FCC CODE 2

(23B) CALL SIGN/OTHER ID

(24B) PAYMENT TYPE CODE

(25B) QUANTITY

(26B) FEE DUE FOR (PTC)

(27B) TOTAL FEE

(28B) FCC CODE 1

(29B) FCC CODE 2

(23C) CALL SIGN/OTHER ID

(24C) PAYMENT TYPE CODE

(25C) QUANTITY

(26C) FEE DUE FOR (PTC)

(27C) TOTAL FEE

(28C) FCC CODE 1

(29C) FCC CODE 2

(23D) CALL SIGN/OTHER ID

(24D) PAYMENT TYPE CODE

(25D) QUANTITY

(26D) FEE DUE FOR (PTC)

(27D) TOTAL FEE

(28D) FCC CODE 1

(29D) FCC CODE 2

(23E) CALL SIGN/OTHER ID

(24E) PAYMENT TYPE CODE

(25E) QUANTITY

(26E) FEE DUE FOR (PTC)

(27E) TOTAL FEE

(28E) FCC CODE 1

(29E) FCC CODE 2

(23F) CALL SIGN/OTHER ID

(24F) PAYMENT TYPE CODE

(25F) QUANTITY

(26F) FEE DUE FOR (PTC)

(27F) TOTAL FEE

(28F) FCC CODE 1

(29F) FCC CODE 2

Before the  
Federal Communications Commission  
Washington, DC 20554

|                                         |   |                         |
|-----------------------------------------|---|-------------------------|
| In the Matter of                        | ) |                         |
|                                         | ) |                         |
| Q-COMM CORPORATION,                     | ) | File No. ITC-T/C- _____ |
| Transferor                              | ) |                         |
|                                         | ) | WC Docket No. _____     |
| and                                     | ) |                         |
|                                         | ) |                         |
| WINDSTREAM CORPORATION,                 | ) |                         |
| Transferee                              | ) |                         |
|                                         | ) |                         |
| Applications for Transfer of Control of | ) |                         |
| Domestic and International Authorized   | ) |                         |
| Carriers Under Section 214 of the       | ) |                         |
| Communications Act, as Amended          | ) |                         |
| <br>To: International Bureau            |   |                         |
| Wireline Competition Bureau             |   |                         |

**APPLICATIONS FOR CONSENT TO TRANSFER OF CONTROL**

Pursuant to Section 214 of the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. § 214, and Sections 63.03, 63.04 and 63.24(e) of the rules, 47 C.F.R. §§ 63.03, 63.04 and 63.24(e), Q-Comm Corporation ("Q-Comm" or "Transferor") and Windstream Corporation ("Windstream" or "Transferee") (together "Applicants") seek Commission consent to the transfer of ultimate control of Q-Comm's authorized subsidiaries described herein from Q-Comm to Windstream. Both Q-Comm and Windstream have local exchange and non-dominant interexchange carrier subsidiaries authorized by the Commission to provide international and domestic interstate telecommunications services. A domestic Section 214 supplement, containing the information required by 47 C.F.R. § 63.04, is attached as Exhibit A. Applicants do not seek streamlined processing of the domestic section 214 application but request expedited review and action consistent with their expected completion of all other regulatory approval

obligations and in order to accommodate the important business reasons that require closing of the transaction no later than the fourth quarter of this year.<sup>1</sup>

## **I. THE APPLICANTS**

### **A. WINDSTREAM CORPORATION (FRN 0014400220)**

Windstream Corporation, a Delaware corporation headquartered at 4001 Rodney Parham Road, Little Rock, Arkansas 72212, (501) 748-7000, is a publicly traded (NASDAQ: WIN) S&P 500 diversified communications and entertainment company. Windstream's subsidiaries provide local and long distance telephone services, broadband and high-speed data services and video services to customers primarily in rural areas in 23 states.<sup>2</sup> A map of Windstream's current service area is attached as Exhibit C. Windstream's subsidiaries also offer a wide range of IP-based voice and data services and advanced phone systems and equipment to businesses and government agencies. Windstream's operations currently include approximately 3.4 million access lines, 1.3 million high-speed Internet customers, 409,000 digital television customers, 9,500 employees, and approximately \$4 billion in annual revenues.

### **B. Q-COMM CORPORATION (FRN 0015732688)**

Q-Comm Corporation is a privately held Nevada corporation with an executive office at 8829 Bond Street, Overland Park, Kansas 66214.<sup>3</sup> Q-Comm provides telecommunications

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<sup>1</sup> Applicants expect to have all necessary state regulatory approvals by November 1, 2010. A Hart-Scott-Rodino pre-merger notification will also be submitted to the Department of Justice, the notice period of which Applicants expect will also be completed by November 1, 2010.

<sup>2</sup> These states are as follows: Alabama, Arkansas, Florida, Georgia, Illinois, Iowa, Indiana, Kansas, Kentucky, Louisiana, Minnesota, Mississippi, Missouri, Nebraska, New Mexico, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, and Texas.

<sup>3</sup> Currently, there are three (3) investors that hold 10% or more of the total outstanding stock of Q-Comm: (1) Al Cinelli with 50.51%; (2) John P. Cinelli with 11.66% and (3) Duke Energy Corporation with 32.59% (indirectly through the following wholly-owned U.S. subsidiaries: Duke Communications Holdings, Inc., which is a wholly-owned direct subsidiary of Cinergy Investments, Inc., which in turn is a wholly-owned direct subsidiary of Cinergy Corp., which in turn is a wholly-owned direct subsidiary of Duke Energy Corporation). No other person or entity

services through its wholly-owned operating subsidiaries -- Kentucky Data Link, Inc. ("KDL"), Norlight Telecommunications, Inc. ("NTI"), and Norlight, Inc. ("Norlight") (KDL, NTI and Norlight collectively, the "Q-Comm Ops").<sup>4</sup> The Q-Comm Ops have an executive office at 8829 Bond Street, Overland Park, Kansas 66214 and have an operations office at 3701 Communications Way, Evansville, Indiana 47715.

- KDL<sup>5</sup> is a regional wholesale provider of long-haul fiber infrastructure that reaches into 26 states in the midwest and east coast areas of the country.<sup>6</sup> A map of KDL's existing and planned network is provided as Exhibit D. KDL primarily provides wholesale long-haul fiber and SONET transport services to carrier customers. KDL's customer base includes wireless providers, cable companies, long distance carriers, Internet service providers and competitive local service providers.
- NTI primarily provides high-speed data services to large enterprise customers and school districts. NTI also provides certain private transport services to carrier customers, including KDL. NTI's services are primarily marketed throughout KDL's network footprint.

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currently holds 10% or more of the outstanding stock of Q-Comm. Each of these persons and entities are United States citizens or were formed in the United States.

<sup>4</sup> Q-Comm's wholly-owned certificated subsidiary, Cinergy MetroNet, Inc. (an Indiana corporation), is not being transferred to Windstream as part of the Transaction.

<sup>5</sup> KDL also has two wholly-owned subsidiaries, which are certificated entities: KDL of Virginia, Inc. ("KDL-VA") (a Virginia corporation) and Knoxville Data Link, Inc. ("Knoxville") (a Tennessee corporation). Neither KDL-VA nor Knoxville holds a domestic or international section 214 authorization. KDL-VA only provides intrastate wholesale transport services in Virginia, and Knoxville provides no services.

<sup>6</sup> In the following states, KDL has existing operations, or expects to have existing operations in the near future: Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Virginia (intrastate services provided by KDL-VA), West Virginia, and Wisconsin.

- Norlight provides a wide range of voice, data, and managed services to small and medium-sized businesses and residential customers primarily in Indiana, Kentucky, Tennessee and Wisconsin.

Diagrams showing the current corporate structure of Q-Comm and the post-Transaction corporate structure of the combined operations are included as Exhibit B.

## **II. DESCRIPTION OF THE TRANSACTION**

Pursuant to an Agreement and Plan of Merger (the "Agreement") dated August 17, 2010 by and among Windstream, Derby Merger Sub, Inc. ("MergerCo") (a direct, wholly-owned subsidiary of Windstream created for purposes of the merger), Q-Comm, and the Stockholders' Representative, Windstream will acquire all of the shares of and sole controlling interest in Q-Comm (the "Transaction"). Under the terms of the Agreement, Q-Comm will merge with MergerCo and upon consummation of the merger, the separate corporate existence of MergerCo will cease and Q-Comm will continue as the surviving corporation in the merger as a direct subsidiary of Windstream. In accordance with Delaware law, all of the rights, privileges, powers, immunities, purposes and franchises of MergerCo and Q-Comm will vest in the surviving corporation and all of the debts, liabilities, obligations and duties of MergerCo and Q-Comm will become the debts, liabilities, obligations and duties of the surviving corporation. In the end, Windstream will be the new ultimate parent company of Q-Comm and its subsidiaries.

## **III. PUBLIC INTEREST STATEMENT**

This Transaction will serve the public interest. Pursuant to Sections 310(d) and 214 of the Communications Act of 1934, as amended, control of the subject licensees and authorized carriers may not be transferred unless the Commission finds "that the public interest,

convenience and necessity will be served thereby.”<sup>7</sup> The first step in the public interest analysis is an evaluation of the Transferee’s qualifications. Windstream is legally, technically and financially qualified to acquire control of the authorized carriers at issue in the instant applications.

#### **A. Public Interest Benefits of the Transaction**

Commission approval of the Transaction will clearly serve the public interest. The telecommunications industry has been and continues to be subject to rapid technological advances, evolving consumer preferences and dynamic changes. The creation of Windstream in 2006 established an independent, stand-alone wireline-centric corporation that serves the public interest by focusing squarely on enhancing local wireline operations, primarily in rural areas.<sup>8</sup> Through its own CLEC operations and its recent acquisition of NuVox, Windstream has also enhanced its CLEC service to enterprise customers in second and third-tier markets. The acquisition of Q-Comm will enable Windstream to expand the scope of its operations, with the primary focus remaining on service to rural areas and smaller cities and towns. In particular, the combination of Windstream’s last-mile facilities with Q-Comm Ops’s long-haul fiber network will enable Windstream to provide a broader range of telecommunication services to its residential and enterprise customers and become a more viable competitor in the telecommunications market. This Transaction will thus help ensure Windstream’s continued ability to deploy and maintain innovative and advanced telecommunications offerings, benefiting consumers and serving the public interest, convenience and necessity.

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<sup>7</sup> 47 U.S.C. §§ 214, 310(d).

<sup>8</sup> Windstream was formed on July 17, 2006 through the spin-off of ALLTEL Corporation’s landline business and its merger with Valor Communications Group.



The efficiencies and economies of scale resulting from the Transaction will improve the combined entities' economic position and, thus, their ability to continue to attract financing to invest in and offer new and innovative services, including in rural areas. Enabling small and medium-sized carriers to achieve such efficiencies is publicly beneficial as competition serves the public interest, and as these companies continue to face new competitive challenges. The Transaction will also provide each Applicant with access to the other's advanced network capabilities, technical and financial strengths, and complementary services, which together are expected to strengthen Applicants' combined ability to provide quality service. The Transaction will enable the customers of Q-Comm Ops to benefit from innovative products offered by Windstream and *vice versa*, and the combined enterprise will be able to achieve greater economies of scale and scope than Q-Comm Ops would have had in continuing to operate independently.

**B. The Transaction Will be Seamless to Subscribers**

But for a potential brand name change, the Transaction will be seamless to Q-Comm Ops customers.<sup>9</sup> The Transaction is not expected to adversely affect – and if anything, will improve – the already high level and quality of service that customers of the Q-Comm Ops currently receive. The Transaction itself is not expected to adversely affect the rates for service that customers currently experience or how the Applicants conduct business with their customers.<sup>10</sup>

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<sup>9</sup> Windstream or the Q-Comm Ops, as appropriate, will provide any necessary notice to customers and the Commission pursuant to Section 64.1120(e) of the rules. See 47 C.F.R. § 64.1120(e).

<sup>10</sup> In view of the current rapidly changing communications market, any provider must constantly review its pricing strategies and product mix to respond appropriately to marketplace demands. While rates, terms, and conditions will not change as a result of the Transaction and will be the same immediately after the Transaction as immediately before the Transaction, prices and product mix necessarily will change over time in the normal course of business and pursuant to standard regulatory and legal processes.

**C. The Transaction Poses No Competitive Risks for the Domestic Interstate Market and Approval Is Consistent with Commission Precedent**

The transaction will not harm competition in any relevant market and will yield tangible public interest benefits. Given the increasingly competitive nature of the interstate telecommunications market, the Applicants seek to complete the Transaction before year end in order to ensure that customers and Applicants can rapidly obtain the benefits that will be generated by the combined companies as well as to avoid possible adverse tax law changes currently scheduled to occur as of January 1, 2011.

**1. Applicants Have a Miniscule Share of the Domestic Interstate Interexchange Market**

Q-Comm Ops and Windstream presently have a miniscule share of the domestic interstate interexchange market and are regulated as nondominant in that market.<sup>11</sup> The Commission has already determined that combinations between nondominant carriers resulting in less than 10 percent market share of the interstate interexchange market are “extremely unlikely [to] result in a public interest harm” and “unlikely to raise public interest concerns.”<sup>12</sup> The Applicants’ combined market share will fall well below that threshold.<sup>13</sup>

<sup>11</sup> See 47 C.F.R. § 63.01; *Regulatory Treatment Of LEC Provision Of Interexchange Services Originating In The LEC’s Local Exchange Area and Policy And Rules Concerning The Interstate, Interexchange Marketplace*, 12 FCC Red 15756, ¶ 163 (1997) (establishing criteria for independent ILECs to be eligible for nondominant regulatory treatment).

<sup>12</sup> *Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations*, Report and Order, 17 FCC Red 3517, ¶ 30 (2002) (“Domestic Streamlining Order”) (citing to U.S. Dept. of Justice and Federal Trade Commission Horizontal Merger Guidelines, § 1.51 n.18).

<sup>13</sup> Commission data indicates that in 2007 U.S. telecommunications carriers reported over \$102.4 billion in interstate revenues. Universal Service Monitoring Report, FCC, CC Docket No. 98-202 at Table 1.7 (2009) (includes data through Aug. 2009) (“2009 USF Monitoring Report”). In 2009, the combined interstate revenues of Windstream and the Q-Comm Ops only totaled approximately \$ 283.4 million. Even assuming a substantial decline in total industry interstate revenues, the combined operations would still readily fall below 10% of the total. With the combined companies’ minimal share of total industry interstate revenues, it is safe to presume that the combined companies have less than 10% of the interstate interexchange market. Similarly, for 2007, the Commission reported \$7.2 billion in total international revenues for U.S. Carriers. 2007 International Traffic Data, FCC International Bureau, at Table 1 (June 2009). In 2009, Windstream and Q-Comm Ops had a combined \$9.6 million in

## 2. Applicants Have Only *De Minimis* ILEC-CLEC Overlaps And No ILEC-ILEC Adjacencies

The Commission has routinely found that where mergers between non-RBOCs result in *de minimis* overlaps and no, or only minimal, adjacencies between ILEC markets where the adjacent exchanges are very small, "no harm to competition is likely to occur."<sup>14</sup> Here, the Transaction results in no ILEC-ILEC adjacencies,<sup>15</sup> and only *de minimis* ILEC-CLEC overlaps, none of which raise any competitive concerns.

The *de minimis* ILEC-CLEC overlaps occur only in a limited number of discrete geographic areas (all in Kentucky) where the Applicants would continue to face multiple competitors as a combined company. Indeed, in Lexington, Kentucky, the largest area of overlap where Norlight<sup>16</sup> actively markets local service, Norlight only serves 39 business customers with a combined 1839 access lines and Windstream's ILEC subsidiary has less than 50,000 customers

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international revenues. Even assuming a substantial decline in total U.S. Carrier international revenues, the combined companies still only hold a minimal share of the international market.

<sup>14</sup> See *Joint Applications of Global Crossing Ltd. and Citizens Communications Co.*, 16 FCC Red 8507, ¶¶ 7-9 (CCB, CSB, WTB 2001) ("*Global Crossing-Citizens*") (granting transfer of control involving incumbent LECs with adjacent exchanges where merger would provide service efficiencies); *Joint Applications of Telephone and Data Systems, Inc. and Chorus Communications, Ltd.*, 16 FCC Red 15293, ¶ 3-9 (CCB, WTB 2001) ("*TDS-Chorus*") (granting transfer of control involving an incumbent LEC and in-region provider of local exchange and exchange access services where transaction overall resulted in pro-competitive benefits). The Commission approved Windstream's acquisitions of CT Communications, D&E Communications, Lexcom, NuVox, and Iowa Telecom in light of these precedents. See Public Notice, 25 FCC Red 1268 (WCB 2010) ("*Windstream-Nuvox*") (citing *TDS-Chorus*); Public Notice, 25 FCC Red 5456 (WCB 2010) ("*Windstream-Iowa*") (citing *Global Crossing-Citizens*); Public Notice, 24 FCC Red 13672 (WCB 2009) ("*Windstream-Lexcom*") (citing *Global Crossing-Citizens* and *TDS-Chorus*); Public Notice, 24 FCC Red 10148 (WCB 2009) ("*Windstream-D&E*") (citing *Global Crossing-Citizens*); Public Notice, 22 FCC Red 15145 (WCB 2007) ("*Windstream-CTC*") (citing *Global Crossing-Citizens* and *TDS-Chorus*). See also *Applications Filed for the Transfer of Control of Embargo Corporation to Century Tel. Inc.*, Memorandum Opinion and Order, 24 FCC Red, 8741, ¶¶ 16-19 (2009) ("*Embargo-CenturyTel*") (citing *TDS-Chorus* in "find[ing] that the proposed transaction is unlikely to harm competition or potential competition in those local markets where the Applicants currently compete"); *Madison River Communications Corp.*, Public Notice, 22 FCC Red 625 (2007) (stating that transferee provided competitive access service in transferor's ILEC territory in one state) ("*Madison River*"), granted, Public Notice, 22 FCC Red 3584 (WCB 2007) ("*Madison River Grant*").

<sup>15</sup> The Transaction involves no ILEC adjacencies because neither Q-Comm nor its subsidiaries are ILECs in any market.

<sup>16</sup> As discussed above, Norlight is the Q-Comm company that provides retail voice services. NTI provides data services only and KDL's focus is on the wholesale fiber/long-haul-transport market.

(the vast majority of which are residential customers) with less than 90,000 lines combined.<sup>17</sup> In Lexington, moreover, Windstream faces direct and potential competition by a number of other competitive carriers (with, like Norlight, a focus on business customers), including AT&T, Acro Communications, ALEC, Birch Communications, Granite, Insight, Level 3, Verizon Business, Navigator, NOS, PacTec, Telcove, Terrablue and twtelecom.

Although a geographic overlap also exists between the service area of KDL and Windstream ILEC territory, this overlap does not raise any competitive concerns because KDL's services do not directly compete with Windstream's services. KDL primarily provides long-haul fiber transport services for carriers through a regional network located in certain midwest, southeast and east coast areas of the country as illustrated in Exhibit D. KDL's customers include wireless providers, cable companies, long distance carriers, Internet service providers and traditional CLECs. To provide such wholesale long-haul services, KDL maintains collocations in various ILEC central offices from which KDL's customers can connect their facilities or facilities leased from the ILEC to KDL's long-haul fiber transport network. A number of these collocations are located in Windstream territory,<sup>18</sup> but unlike Windstream, KDL does not provide wholesale last-mile connectivity. Rather, KDL's customers lease the last-mile connectivity from Windstream to connect to KDL's facilities for transport to the customer POP or other facilities located outside of Windstream's local ILEC service area. Thus, while in a

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<sup>17</sup> The next largest area of overlap involves Glasgow, Kentucky, where Norlight no longer actively markets service and where it only serves 829 customers with a combined 908 access lines. From there, the size of the overlaps drops even more precipitously, as follows: Elizabethtown - 18 customers/384 lines; Berea - 3 customers/52 lines; Smith's Grove - 7 customers/13 lines; Leitchfield - 5 customers/9 lines; Bardwell - 1 customer/8 lines; Monticello - 1 customer/8 lines; Bee Spring - 2 customers/4 lines; Columbia - 2 customers/3 lines; Shepherdsville - 1 customer/2 lines; Brownsville - 1 customer/1 line; Caneyville - 1 customer/1 line; Clarkson - 1 customer/1 line; and Park City - 1 customer/1 line.

<sup>18</sup> The KDL collocations in Windstream territory are located in the following markets: Georgia (Damon and Lafayette); Kentucky (Lexington (4), Ashland, Berea, Elizabethtown, Glasgow, Hazard, London, Manchester, Morehead, Shepherdsville and Summertown); and Ohio (Newark).

sense there is some overlap in the Windstream ILEC markets where KDL has collocations, the services are complementary and the combination of the two entities will serve to enhance the combined companies' ability to offer a complete end-to-end service.

NTI also overlaps with the Windstream ILEC service territory in the same markets as KDL.<sup>19</sup> Like KDL, the NTI overlap raises no competitive concerns because NTI's services do not directly compete with Windstream's services. NTI does not provide any voice services and only provides high speed data services to large enterprise customers and school districts that participate in the Schools and Libraries Support Mechanism (also known as E-Rate). NTI also provides a limited amount of private transport services to carrier customers and to KDL in order to enhance the reach of KDL's fiber network. The enterprise customers and school districts served by NTI are largely in Arkansas, Alabama, Georgia, Illinois, Indiana, Kentucky, Missouri, Texas, Tennessee, Virginia, and Wisconsin.

The Commission has uniformly approved similar non-RBOC transactions involving a limited number of overlapping and/or adjacent exchanges affecting a limited number of access lines.<sup>20</sup> This transaction clearly meets this standard.<sup>21</sup> Among Windstream's over 1,000 ILEC exchanges, there only a handful of *de minimis* ILEC-CLEC overlaps resulting from this

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<sup>19</sup> NTI shares much of the same geographic service area as KDL.

<sup>20</sup> See, e.g., *TDS-Chorus* ¶¶ 9-10; *XO Communications, Inc. for Consent to Transfer Control of Licenses and Authorizations Pursuant to Section 214 and 310(d) of the Communications Act and Petition for Declaratory Ruling Pursuant to Section 310(b)(4) of the Communications Act*, 17 FCC Red 19212, ¶ 30 (IB/WTB/WCB 2002) (finding no anticompetitive effects resulting from the combined operation of two overlapping competitive local exchange carriers because of the presence of other competitors and the transaction resulting in public interest benefits); *Windstream-Norox* at 1; *Madison River* at 1-3 and *Madison River Grant*.

<sup>21</sup> See *Global Crossing-Citizens* ¶ 7.

Transaction, primarily limited to one market in Kentucky, and there are no ILEC adjacencies.<sup>22</sup>

Importantly, the combined company will face significant competition in the enterprise market.<sup>23</sup>

#### D. International Section 214 Public Interest Considerations

Approval of the Transaction (i) will promote and preserve competition in the international telecommunications marketplace and (ii) will ensure that Windstream has the necessary authority to continue to offer seamless international services to existing Q-Comm customers. The Transaction poses no risk of anticompetitive impact on the U.S. international telecommunications marketplace. Applicants together hold only a tiny share of the international telecommunications market and therefore the Applicants would have no ability to adversely affect competition.<sup>24</sup>

In addition, the Commission's principal concern for "the exercise of foreign market power in the U.S. market" is that such market power "could harm U.S. consumers through increases in prices, decreases in quality, or reductions in alternatives in end user markets."<sup>25</sup> As the Commission explained further, "generally, this risk occurs when a U.S. carrier is affiliated with a foreign carrier that has sufficient market power on the foreign end of a route to affect competition adversely in the U.S. market."<sup>26</sup> As discussed herein, Windstream does not

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<sup>22</sup> In contrast, *Global Crossing-Citizens* involved adjacencies in four states, and also involved 71 exchanges ranging from a couple of hundred to nearly 300,000 access lines. See *Global Crossing Ltd. And Citizens Communications Co. Ex Parte Presentation*, CCB Pol. No. 00-1, at 5-6 and Attachment C. Windstream's acquisition of CTC Communications entailed many adjacencies as well as a similar number of ILEC-CLEC overlaps (eight total) and the Bureau found that the Commission's rationale from *Global Crossing-Citizens* and *TDS-Chorus* supported approval of that transaction. See *Windstream-CTC* at 1. See also *Windstream-D&E* at 1; *Windstream-Lexcom* at 1; *Windstream-NuVox* at 1.

<sup>23</sup> See *Embargo-CenturyTel* ¶ 19 (stating that "given the enhanced revenue opportunities in serving enterprise customers, . . . competitive LECs are more likely to target such customers when entering an area").

<sup>24</sup> See *supra* note 13 (describing the Commission's international revenue data).

<sup>25</sup> *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market; Market Entry and Regulation of Foreign-Affiliated Entities*, Report and Order and Order on Reconsideration, 12 FCC Rcd. 23891, 23951-54 (1997).

<sup>26</sup> See *id.*

currently have and will not acquire through this Transaction any affiliations with foreign carriers - with market power or otherwise - as a result of the Transaction. Thus, consumers will not be adversely affected by virtue of the Transaction.

**IV. SECTION 63.24 INFORMATION**

In accordance with Section 63.24(e) of the Commission's rules, 47 C.F.R. § 63.24(e), the Applicants submit the following information in support of the instant application. Information is provided responsive to the provisions of Section 63.18 of the rules, paragraphs (a) through (p), as applicable.

**(a) Name, address, and telephone number**

Transferor:

Q-Comm Corporation  
8829 Boud St.  
Overland Park, KS 66214  
913-754-3339 (Tel)  
812-759-1647 (Fax)

Authorized Carriers (international and/or domestic), with FRN Numbers:

Norlight, Inc. (FRN 0007345754)  
Norlight Telecommunications, Inc. (FRN 0002704682)  
Kentucky Data Link, Inc. (FRN 0004565008)

Transferee:

Windstream Corporation  
4001 Rodney Parham Rd.  
Little Rock, AR 72212  
(501) 748-7000 (Tel)  
(501) 748-7996 (Fax)

**(b) Citizenship**

Transferor:

Q-Comm Corporation is a Nevada corporation.

Authorized Carriers (international and/or domestic):

Norlight, Inc. is a Kentucky corporation.  
Norlight Telecommunications, Inc. is a Wisconsin corporation.  
Kentucky Data Link, Inc. is a Kentucky corporation.

Transferee:

Windstream is a Delaware corporation.

(c) **Contact Information (Answer to IBFS Main Form Question 10)**

For the Transferor and Authorized Carriers:

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mwalker@wbklaw.com

(d) **International Section 214 Authorizations (Answer to IBFS Main Form Question 10)**

Authorized Carriers:

Norlight Telecommunications, Inc. is authorized to provide (1) global facilities-based services pursuant to international Section 214 authorization granted in IB File No. ITC-214-19960826-00406 (Old File No. ITC-96-481), (2) global resale services pursuant to international Section 214 authorization granted in IB File No. ITC-214-19960826-00407 (Old File No. ITC-97-478), and (3) facilities-based private line, point-to-point or point-to-multipoint voice and data services between the United States and Canada pursuant to international Section 214 authorization granted in IB File No. ITC-214-19940224-00080 (Old File No. ITC-94-179).<sup>27</sup>

On August 16, 2010, NTI filed a *pro forma* assignment of its international Section 214 authorizations to its affiliate, Norlight.<sup>28</sup> Depending on the timing of the Commission's processing, the above-referenced international 214 authorizations may be held by Norlight, rather than NTI, at the time the Commission acts upon the instant applications and the Applicants close the Transaction. Accordingly, Applicants request that the Commission's action on the

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<sup>27</sup> These international Section 214 authorizations were granted to Norlight, Inc., which subsequently changed its name to Norlight Telecommunications, Inc.

<sup>28</sup> IB File No. ITC-ASG-NTR2010-02566.

international Section 214 portion of this Application apply to whichever entity, NTI or Norlight, that then currently holds the above-referenced international 214 authorizations.

Transferor:

Q-Comm holds no international Section 214 authorizations in its own right, but its direct subsidiary, NTI (Norlight – subsequent to the *pro forma* assignment), holds the international Section 214 authorization described above.

Transferee:

Windstream holds no international Section 214 authorizations in its own right.<sup>29</sup>

**(h) Ten Percent or Greater Interest Holders/Interlocking Directorates (Answer to IBFS Main Form Questions 11 and 12)**

To its knowledge Windstream is and will remain post-closing a publicly-traded company with no 10 percent or greater interest holders.

Windstream has no interlocking directorates with a foreign carrier, nor will it have any such interlocking directorates after consummation of the transaction.

**(i) Foreign Carrier Affiliation Certification (Answer to IBFS Main Form Question 14)**

Windstream certifies that it will have no foreign carrier affiliations upon consummation of the transaction.

**(j) Foreign Carrier and Destination Countries (Answer to IBFS Main Form Questions 14-17)**

Windstream certifies that upon consummation of the Transaction: (1) it will not be a foreign carrier; (2) it will not control any foreign carriers; (3) no entity that will own more than

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<sup>29</sup> Windstream's authorized subsidiaries provide international telecommunications services pursuant to the following international Section 214 authorizations: File Nos. ITC-214-2006-0816-00433; ITC-214-20006719-00451; ITC-214-19981110-00833; ITC-214-20010802-00418; ITC-214-20060501-00261; ITC-214-1993040S-00054; ITC-214-19970707-00382; ITC-214-19930302-00003; ITC-214-20000627-00408; ITC-214-19961219-

25 percent of or control Windstream controls a foreign carrier; and (4) two or more foreign carriers (or parties that control foreign carriers) will not own, in the aggregate, more than 25 percent of Windstream.

**(k) WTO Membership of Destination Countries (Answer to IBFS Main Form Questions 14-17)**

Not applicable.

**(l),(m) Nondominant Regulatory Classification (Answer to IBFS Main Form Questions 14-17)**

Not applicable. As Windstream will have no foreign carrier affiliations, it is entitled to continued nondominant regulatory classification pursuant to Section 63.10(a)(1) of the rules, 47 C.F.R. § 63.10(a)(1).

**(n) Special Concessions Certification (Answer to IBFS Main Form Question 21)**

Windstream certifies that it has not agreed to accept special concessions directly or indirectly from any foreign country with respect to any U.S. international route where the foreign carrier possesses market power on the foreign end of the route and will not enter into such agreements in the future.

**(o) Federal Benefits/Anti-Drug Abuse Act of 1988 Certification (Answer to IBFS Main Form Question 25)**

Applicants certify pursuant to Sections 1.2001 through 1.2003 of the rules, 47 C.F.R. § 1.2001-1.2003, that no party to the application is subject to a denial of Federal Benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862.

(p) **Eligibility for Streamlined Processing (Answer to IBFS Main Form Question 20)**

As Windstream is not a foreign carrier and does not have any foreign carrier affiliations, the instant application qualifies for streamlined processing pursuant to Section 63.12 of the rules, 47 C.F.R. § 63.12.

V. **TRANSFER OF CONTROL OF DOMESTIC SECTION 214 AUTHORITY**

Pursuant to Section 63.04(b) of the rules, 47 C.F.R. § 63.04(b), information responsive to Section 63.04(a)(6)-(a)(12) of the rules is provided in **Exhibit A**.

VI. **CONCLUSION**

For the foregoing reasons, Applicants request expedited Commission consent to the transfer of control of the identified Q-Comm subsidiaries to Windstream in connection with the Transaction described herein.

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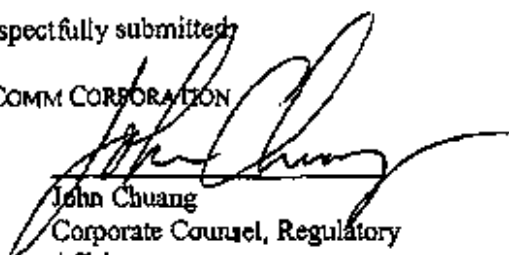
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## **EXHIBIT A**

### **Transfer of Control of Domestic Section 214 Authority Information Responsive to Section 63.04(a)(6)-(a)(12) of the Rules**

#### **1. Description of Transaction (§ 63.04(a)(6))**

The Transaction is described in Section II.

#### **2. Description of Geographic Service Area and Services in Each Area (§ 63.04(a)(7))**

Applicants' wireline domestic interstate and international services are described in detail in Sections I and III. Q-Comm and Windstream subsidiaries both presently offer domestic interstate and international telecommunications services in their service territories, and Windstream subsidiaries of the combined companies will continue to offer such services after consummation of the merger.

#### **3. Streamlined Processing (§ 63.04(a)(8))**

Applicants do not seek streamlined processing of the domestic interstate section 214 application.

#### **4. Other Related Applications (§ 63.04(a)(9))**

Related to the instant Application are concurrently-filed applications to transfer control of Q-Comm's subsidiaries, NTI and Norlight, holding various Title III wireless licenses to Windstream. (See ULS File No. 0004354631 for the lead application.) In addition, on August 16, 2010, NTI filed a *pro forma* assignment of its international Section 214 authorizations to its affiliate, Norlight.<sup>30</sup>

#### **5. Statement of Imminent Business Failure (§ 63.04(a)(10))**

Not applicable.

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<sup>30</sup> IB File No. ITC-ASG-INTR2010-02566.

**6. Separately Filed Waiver Requests (§ 63.04(a)(11))**

Not applicable.

**7. Public Interest Statement (§ 63.04(a)(12))**

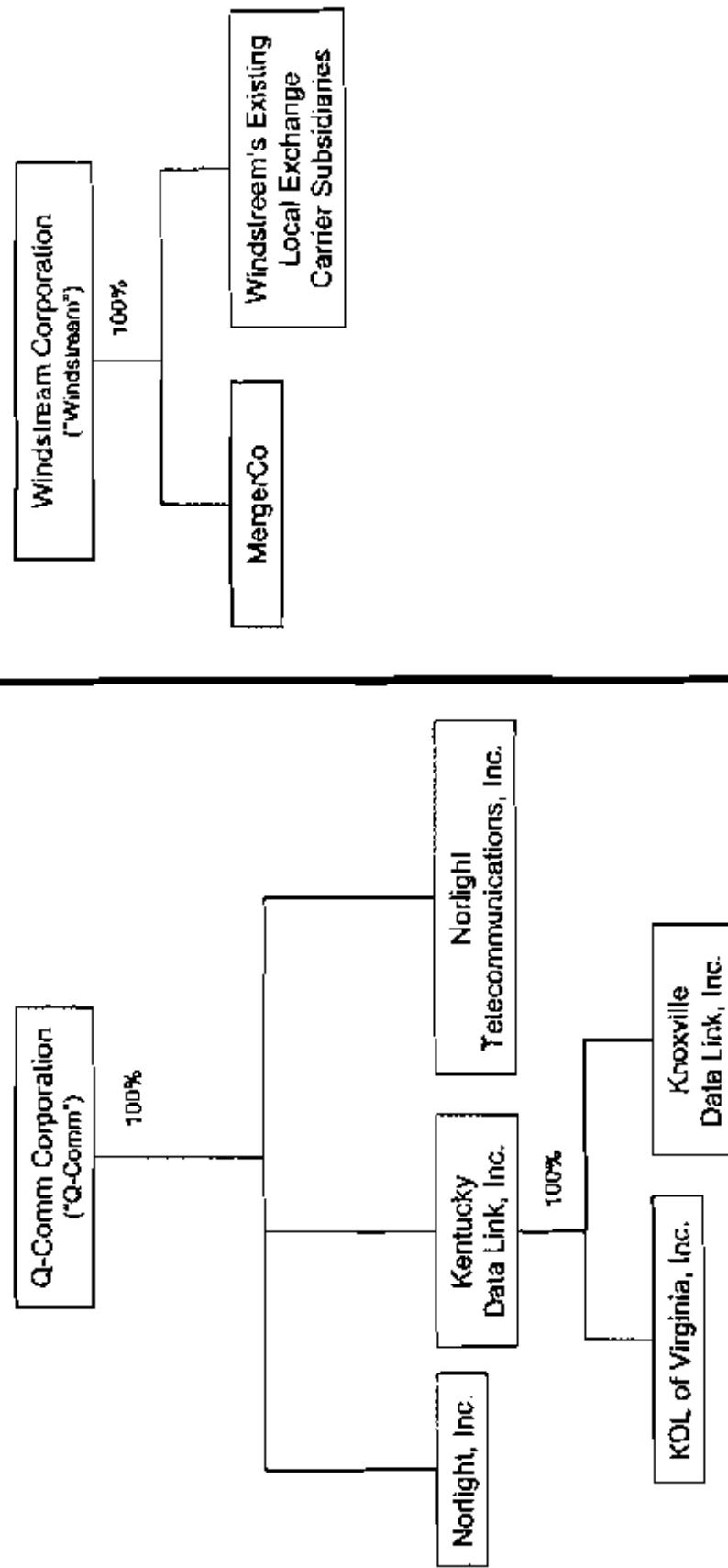
See Section III.



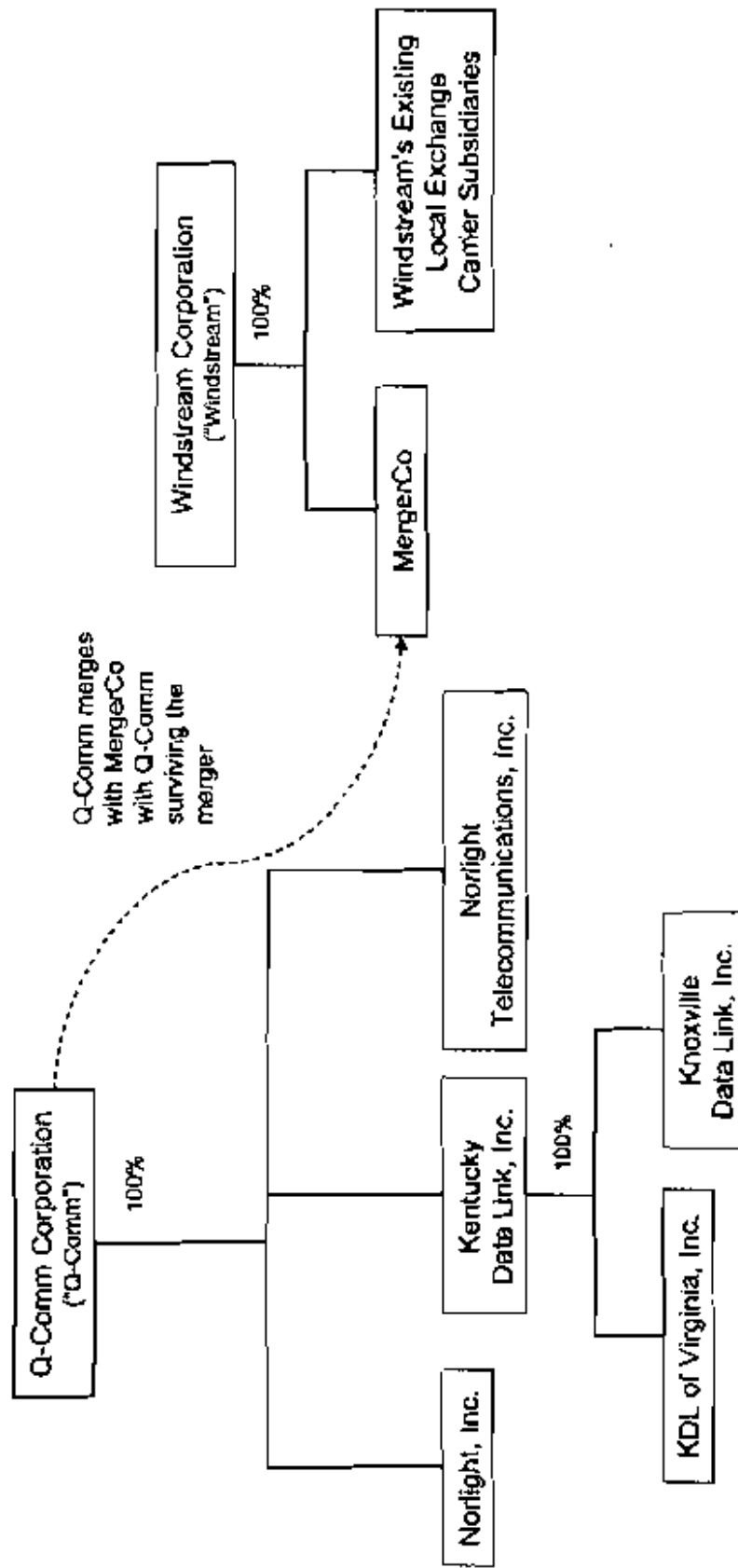
**EXHIBIT B**

**Organization Charts Illustrating the Transaction**

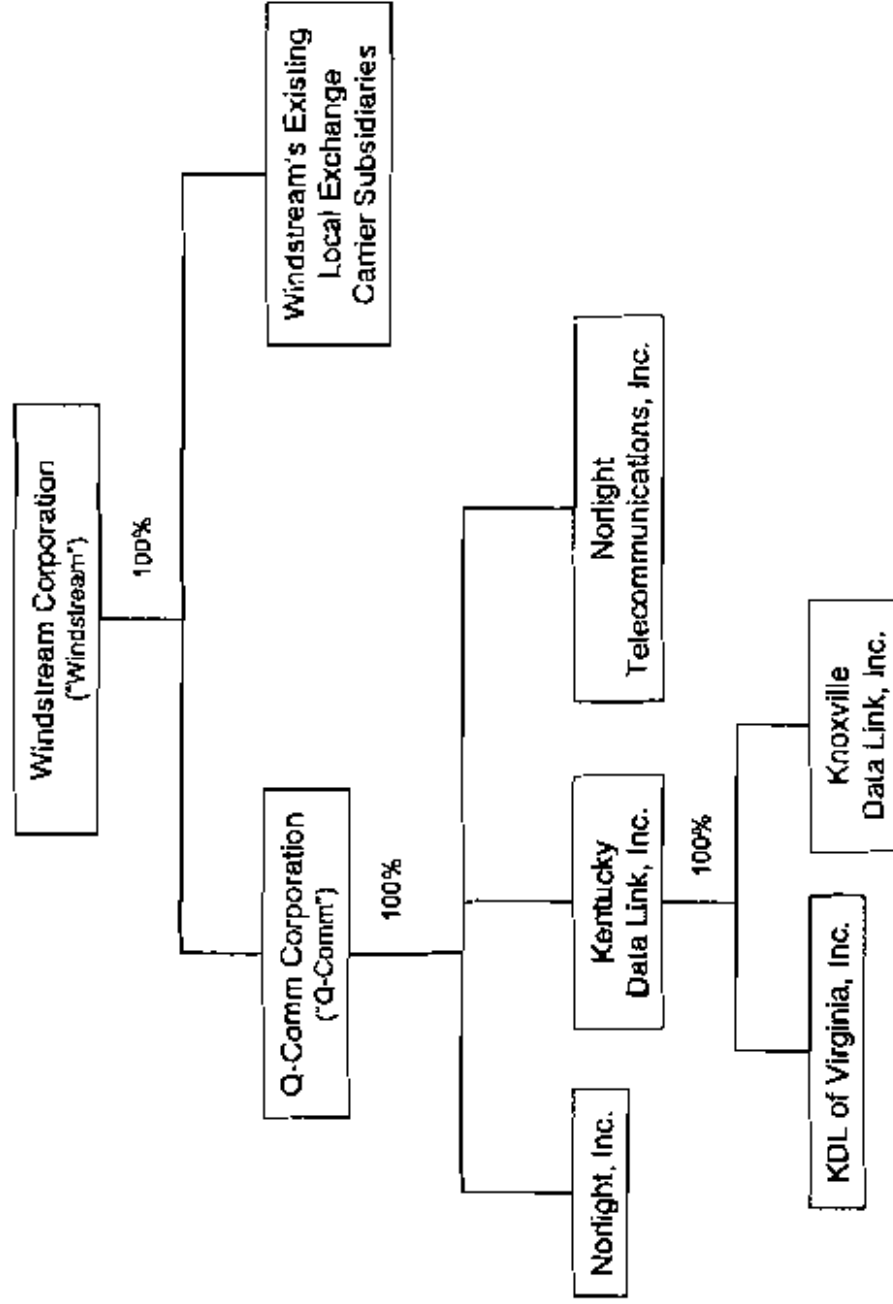
Pre-Transaction Ownership of the Applicable  
Regulated Subsidiaries of Q-Comm and Windstream



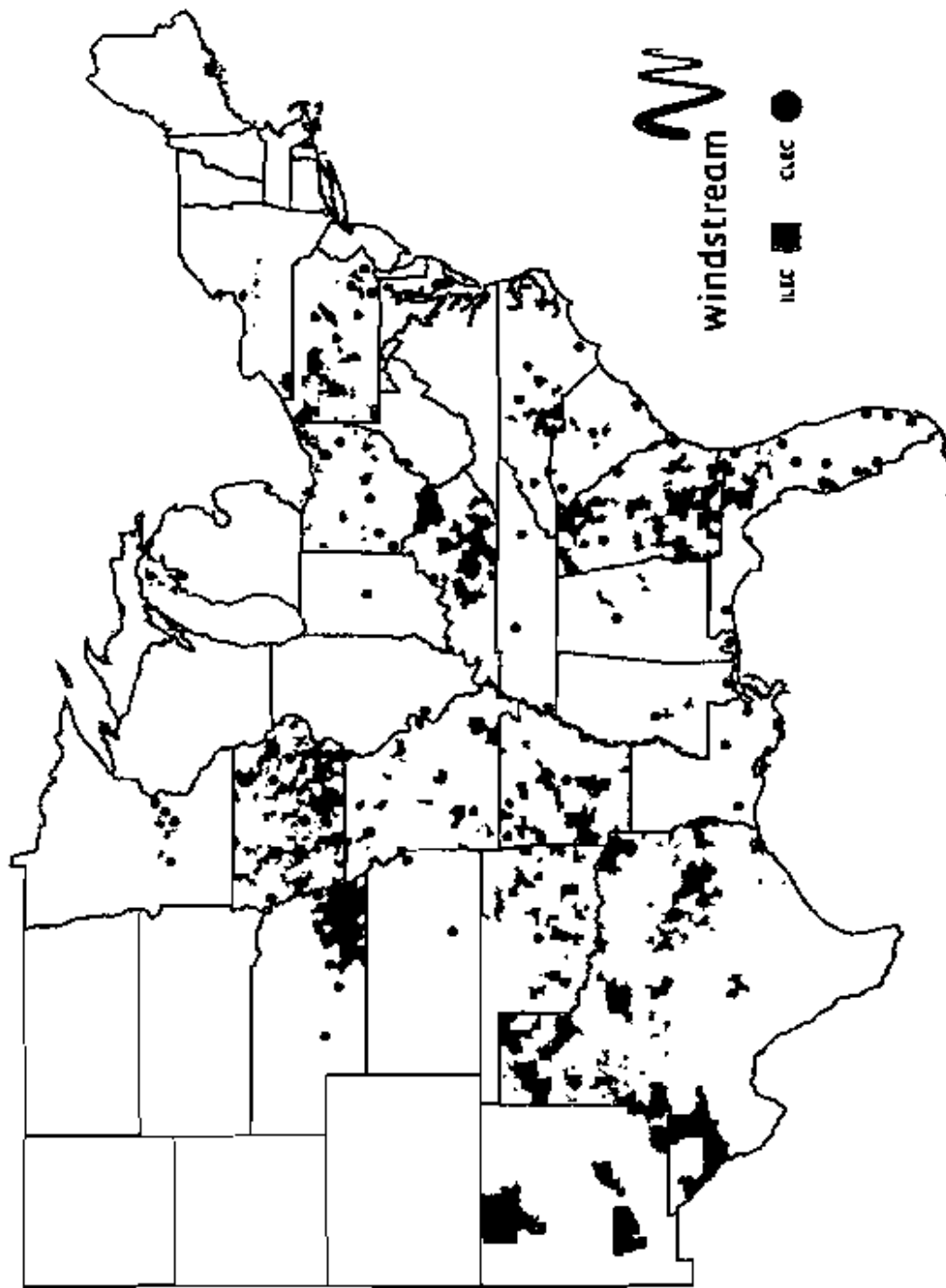
## Illustration of Transaction



**Post-Transaction Ownership of the Applicable  
Regulated Subsidiaries of Q-Comm and Windstream**



**Exhibit C**  
**Windstream Service Area Map**



**Exhibit D**  
**KDL/NTI Network Map**



# 10

Optical Fiber  
Communications

DS-1  
DS-3  
OC-3  
OC-12  
OC-48  
OC-192

GigE

2.5 Gig WAVE  
10 Gig WAVE

SALES LINE

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